CF0000062707

(1) (2)

समक्ष उच्च न्यायालय जबलपुर मध्यप्रदेश

क्रिमिनल अपील नं0 1310/97/99

आवेदन पत्र अन्तर्गत धारा 374 दण्ड प्रक्रिया संहिता

अभियुक्त:- - श्यामलाल उर्फ करिया
सतनामी आत्मज गणेराम
सतनामी आयु 38 वर्ष पेशा
मजदूरी निवासी सुन्दरमाठा
थाना सारगढ़ जिला रायगढ़ (मo प्र0)

बनाम

अभियोजन:- - मध्यप्रदेश शासन द्वारा
आरक्षी केन्द्र सारगढ़ जिला
रायगढ़ (मo प्र0)

संजय
आजीवन कारावास

जेल में
07/2/97 7/2/97
धारा अंतर्गत 302 भा0
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अभियुक्त निम्नलिखित निवेदन करता है:-

Filed on 6/1/4
by Shri Ku. M. Chandrani Advocate
Rs. A.R.

(22)

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आदेश पत्रक

मामला क्रमांक Cri. Appeal No. 1310/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE SHRI L.C.BHADOO, &
HON'BLE SHRI V.K. SHRIVASTAVA, JJ.

27/02/2006

Mrs. Usha Chandrakar, Counsel for the appellant.
Mr. U.N.S. Deo, Additional Public Prosecutor for the State.
Heard.

ORAL JUDGMENT

Per Hon'ble Shri L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C. appellant Shyamlal has questioned the legality and correctness of the judgment of conviction and order of sentence dated 19/03/1997 passed by II Additional Sessions Judge, Raigarh, in Sessions Trial No. 84/97 whereby learned Additional Sessions Judge, after holding the accused appellant guilty for commission of the offence under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

2) The case of the prosecution, in brief, is that PW/4 – Savitri Bai lodged a report (P/6) in the Police Station: Sarangarh, on

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06/02/1997 to the effect that today at about 4.00 p.m. she returned to her house. Dayaram- mason and his labour Malikram were constructing the staircase of the house of Ramlal. Her father Chedu Ram was also sitting on the wall, in the meantime, accused Shyamlal came and slapped Malik Ram and when Dayaram came to rescue Malik Ram, accused slapped him also and picked up the Spade lying on the spot on which Daya Ram and Malik Ram and her father came towards their house, accused Shyamlal came running and assaulted with the Spade on the head of her father two – three times on which she started shouting for the help. Her father Chedu Ram fell down and Shyamlal throwing the Spade on the spot ran way. Receiving this report, Station House Officer S.S. Sharma, registered Crime No.33/97 for commission of offence under Section 302 of the I.P.C., and left for scene of occurrence. After giving notice to the Panchas (P/9) prepared the Panchanama of the body of Chedu Ram. He took into possession the Spade from the place of occurrence under (P/10-A). Accused while in custody, gave memorandum (P/10) regarding his blood stained clothes and in pursuance of memorandum P/10 shirt was taken

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

into possession under (P/1) and full pant of the accused was taken into possession under (P/2). One shirt and shawl were taken into possession under P/3. One bag and pair of Chappals were taken into possession under (P/4) and blood stained clothes were taken into possession under (P/11). Body of Chedu Ram was sent for post mortem examination to the Government Hospital, Sarangarh vide (P/12-A) where Dr. J.N. Shukla conducted the post mortem examination on the body of Chedu Ram and Dr. J.N. Shukla prepared the postmortem report (P/12). The site plan (P/14) was prepared by the Investigating Officer. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, under P/15 from where report (P/17) has been received). Clothes of the deceased were taken into possession under (P/20). Articles were also sent for examination to Serologist from where report was received.

3) After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Sarangarh, who in turn committed the case to the Sessions Court, Raigarh,

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from where the learned Additional Sessions Judge, received the case on transfer for trial.

4) The prosecution in order to establish the charge against the accused/appellant examined 12 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge, after hearing Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced him as mentioned in paragraph one of the judgment.

5) We have heard Mrs. Usha Chandrakar, learned counsel for the appellant and Mr. U.N.S. Deo, Additional Public Prosecutor on behalf of the State.

6) The homicidal death of Chedu Ram is not in dispute. As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that no independent witness has stated that he saw the accused assaulting Chedu Ram and the evidence of Savitri Bai

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(PW/4) does not inspire confidence as she has stated that two – three assaults were made by the accused whereas more number of injuries were noticed on the body of Chedu Ram.

7. In order to appreciate the arguments advanced by learned counsel for the appellant, we have perused the evidence of PW/4 Savitri Bai who is none-else the daughter of the deceased and she has stated that on the fateful day she went to collect the cow-dung and returned in the evening. The house of Ramlal is adjacent to their house and some construction work was going on. Daya Ram was talking and her father was sitting on the wall, at that time accused came running and slapped Daya Ram, thereafter, he picked up the Spade lying on the spot and attacked her father which he stopped with the help of hand. The accused again assaulted her father with Spade on his head as a result of which he fell down and accused ranaway throwing the spade on the spot on which she raised screaming on which Shyam Charan, Sahju and Bharat came and she apprised them about the incident. Thereafter she went to lodge the report and lodged the report (P/6) in the Police Station. In the cross examination she has stated that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —(—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

she returned at about 4.00 p.m. and stated that accused Shyamlal was wearing blue colour Paijama and Kurta and he was carrying one bag. She had seen the incident from the distance of 10 – 12 ft. Shyamlal attacked her father 4 - 5 times. In the cross examination of this witness defence has not been able to elicit any circumstance which makes the evidence of this witness unreliable and/untrustworthy. Moreover, the evidence of Savitri Bai has been corroborated to certain extent by PW/2 Daya Ram who was working as mason at the place of occurrence and stated that he was constructing the staircase of the house of Ramlal and Malik Ram was working with him and Chedu Ram was sitting on the boundary wall. Accused came near to them and demanded money from Malik Ram and slapped him on the cheek on which he has stated that money had been withdrawn by you people, from where should he give the money on which he slapped him also and when the accused started looking here and there, they became frightened and ran away. When they were running in the street, they heard screaming of Savitri Bai (PW/4), daughter of Chedu Ram and she was shouting "come come" her father has been

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murdered by Shayamlal, but they ran away. Bharatlal has also stated that the daughter of Chedu Ram came and informed that her father has been murdered. Therefore, the evidence of PW/4 Savitri Bai has been corroborated by Daya Ram who was working on the spot as mason. The evidence of Savitri Bai PW/4 has also been corroborated by the medical evidence of Dr. J.N. Shukla, who has stated that he conducted the postmortem on 07/02/1997 and noticed as many as eight lacerated wounds on the body of deceased out of which four injuries were on the right hand, one was on the right side of the face, mandible and maxillary bones were found fractured and lacerated wound over occipital region was there. There was a lacerated wound on the occipital bone deep up to the bone and there was lacerated wound on the right side of the neck deep up to the bone and lacerated wound on the parietal and frontal bone. On dissection of the body, occipital bone, right anterior parietal and right frontal bone were found fractured. All the injuries were ante mortem in nature. The cause of death was coma as a result of head injury. Therefore, in view of the above evidence of Dr. J.N. Shukla the evidence of PW/4 Savitri

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Bai, is corroborated. Dr. J.N. Shukla, has also examined the Spade and opined that the injuries which were found on the body of Chedu Ram could be caused by Spade in question. As far as question that Savitri Bai has stated that four - five assaults were made by the accused whereas eight injuries were found on the body of the deceased, is concerned since injuries were caused by the Spade, there was every possibility that more than one injury could be caused by one assault. Moreover, Savitri Bai has stated that four assaults were made by the accused on the body of the deceased but it is not possible for any of the eye-witness to count each and every assault and number of injuries received by the deceased. Therefore, we are of the considered opinion that in crime in question the accused was author of the assault made on the body of Chedu Ram and we do not find any illegality or infirmity in the judgment in question.

7) Learned counsel for the appellant argued that from the prosecution evidence, it is not established that accused assaulted the deceased with an intention to cause of death of Chedu Ram. It is evident from that evidence of Dr. J.N. Shukla (PW/8) that as

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many as eight injuries were caused with deadly weapon like Spade and out of which four lacerated wounds were on the head as a result of which occipital, parietal and frontal bones were fractured. The intention of cause can be gathered from the part of the body on which injuries were inflicted, the nature of the weapon and the background of the crime. If we look into the evidence, accused caused as many as eight injuries out of which four injuries were on the vital part of the body i.e. head and as a result of which almost all the bones of head and skull were fractured. Therefore, the intention of the accused to cause the death of Chedu Ram was writ large, therefore, we do not find substance in the arguments of learned counsel for the appellant. In the result, the appeal is devoid of any merit and the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge
27/02/2006

Sd/-
V.K. Shrivastava
Judge
27/02/2006

Raju

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